

7 FAM 740 VESSELS

(TL:CON-4; 12-30-83)

7 FAM 741 STATUS

7 FAM 741.1 Use of Generic Term "Vessel"

The term "vessel" is used in a generic sense to include every kind of water craft used as a means of transportation by water. In everyday language, vessels are usually described as either ships or boats, depending on their size and other characteristics. However, for convenience, ships and boats are normally considered together as "vessels" in the statutes and regulations.

7 FAM 741.2 Foreign Vessels

As stated in Section 7 FAM 702 , a "foreign vessel" is one, regardless of ownership, which is documented under a foreign flag. A U.S.-owned vessel is a "foreign vessel", regardless of ownership, if it is registered under the laws of a foreign country. For example, numerous U.S.-owned ships sail under so-called "flag of convenience" registry in countries such as Liberia and Panama.

7 FAM 742 DOCUMENTATION AND DEPOSIT OF SHIP'S PAPERS

7 FAM 742.1 Deposit

Every master of a registered vessel of the United States is required by law (46 U.S.C. 354) to deposit the ship's papers after entering a foreign port where an American consular officer is present. However, in modern-day practice this is rarely done because conditions have changed greatly since the statute was enacted in 1803.

7 FAM 742.2 Evidence of Documentation

The term "ship's papers" includes the Certificate of Documentation of a vessel of the United States, its shipping agreement, and its crew list. The Certificate of Documentation (Form CG 1270), is the certificate issued to each U.S. vessel as evidence of its documentation under the laws of the United States.

7 FAM 742.3 Purpose

The original purpose of requiring the deposit of ship's papers was to enable consuls, by detention of vessels, to compel masters to settle wage accounts with seamen discharged abroad and to compel the masters to make provision for their onward employment or homeward passage. Detention of vessels was a reasonably effective provision for the protection of seamen under 19th century conditions. Today, the necessity for the deposit of ship's papers has considerably diminished because the responsibility of vessel owners and operators for repatriation of seamen is well-accepted. This responsibility is reinforced by maritime collective bargaining agreements and the decisions of the Comptroller General. However, the law has a residual enforcement value to be invoked in special cases where other remedies might fail. Refusal to surrender the ship's papers upon demand of a consular officer renders a master liable to a fine of \$500 (46 U.S.C. 355).

7 FAM 742.4 When Presented

The master or another officer of a vessel often presents certain ship's papers to the consular officer when shipping and discharging seamen or when conducting other ship's business. Inasmuch as the master takes the papers after leaving office, the presentation is not considered a deposit within the meaning of the statute.

7 FAM 742.5 Safeguarding Papers

A consular officer shall accept a ship's papers for deposit when offered. If a receipt is requested, one should be given. The ship's papers should be safeguarded and returned upon request.

7 FAM 742.6 Prohibition Against Withholding

With regard to possible claims against vessels, the Attorney General has ruled that "An American Consul...has no authority, by withholding a ship's papers to compel payment of demands for which suit has been brought by a creditor...he does not have general power of deciding upon all manner of disputed claims against American vessels" (9 Op. Att.Gen. 384).

7 FAM 743 DOCUMENTARY SERVICES

7 FAM 743.1 Marine Notes of Protest and Extended Notes of Protest

Marine notes of protest (Form FS-281d) and extended notes of protest (Form FS-281d, reverse side) are used by the master to report any incident that occurred during the voyage which may be used by the operators or insurance companies in future claims regarding damage to the ship or cargo caused by conditions beyond the master's control (see 7 FAM 743 Exhibit 743.1 (p.1) and 743.1 (p.2)). The authority for taking a marine note of protest is provided by statute (22 U.S.C. 4193), and is a service for the owner and the operators of a vessel. There is no requirement that a marine note of protest be filed under any circumstances, although the master, owner, operators, or agent of a vessel may elect to do so. Masters of American vessels, however, are required to report promptly accidents involving bodily injury, death, or property damage. These must be reported to the U.S. Coast Guard pursuant to 33 U.S.C. 361.

a. Personal Appearance Required

The master of a vessel who elects to make a marine note of protest is required to make the protest in person before a consular officer unless the owner, agent, or the operators have furnished the consular officer with a written statement authorizing the making of the protest by an officer other than the master. Under no circumstances where the owner, agent, operators, or master have elected to file a note of protest should a consular officer waive a personal appearance by the master without the specific authorization of the ship's owner, operators, or agent.

b. Execution of Notes

Where the owner, agent, operators, or master elected to do so, a simple note of protest and all certified copies must be executed on the face of Form FS-281d. An extended protest and all certified copies should be executed on the reverse side of Form FS-281d. No fee is charged for the filing of the marine note of protest. In cases of foreign vessels, fees are charged in accordance with Items 30 and 31 of the Schedule of Fees (see section 7 FAM 763.2). Form FS-281d is prepared in an original and as many copies as are necessary to provide the required number of certified copies. The form must be typed and the original signed and sealed with the consular impression seal. The carbon copies of the protest note must be certified and furnished to the master. The original is filed with other forms relating to the particular entry and clearance of the vessel.

7 FAM 743.2 Shipping Certificates

a. Certificate of Inspection

No action is taken by the consular officer when a vessel's Certificate of Inspection issued by the U.S. Coast Guard expires before the vessel returns to the United States. Inasmuch as the certificate cannot be extended overseas, the ship continues to operate under the expired certificate.

b. Radio Station License

In most cases, vessels of the United States are subject to the Communications Act of 1934. Under the Act, they are required to have the prescribed radio equipment and apparatus inspected at least once a year by the Federal Communications Commission. There are no facilities in foreign ports for inspection and certification. Consular officers are not authorized to extend ship radio station licenses, to issue new ones, or to certify the licenses.

c. International Load Line Certificate

The load line certificate is a document prescribing the position of marks on each side of the vessel which indicate the depth to which the vessel may be safely loaded, taking into consideration the season of the year and the intended voyage. Normally the American Bureau of Shipping or other recognized classification society issues these certificates to U.S. vessels. Load line certificates are valid for five years and require annual endorsement. Consular officers have no authority to issue, endorse, or renew these certificates inasmuch as surveyors of the American Bureau of Shipping are available at all principal posts.

d. Load Line Violations

Enforcement authorities of a foreign port are required to notify the consular officer if a U.S. vessel in the port is reported to be loaded deeper than the permissible draft allowed under the International Convention on Load Lines of 1966. If the master of the vessel disputes the allegation, the consular officer should investigate and report the matter to the local authorities. A telegraphic report of each violation is then made to the Department, marked for the attention of the U.S. Coast Guard.

7 FAM 743.3 Conventions

a. International Convention for the Safety of Life at Sea

The International Convention for the Safety of Life at Sea of 1974 (Treaties and Other International Acts, Series 9700) prescribes certain minimum standards, safety equipment, radio installation, and general procedures for the ships of the United States and other countries that are parties to the Convention, as follows:

(1) Vessels of the United States carry one or more of the certificates issued under the Convention. Usually these certificates are issued in the United States. Under certain conditions, these may be reissued or extended in foreign ports, except as noted in sections 7 FAM 743.3 a(1), (2), and (3), at the request of the master or the agent acting at the master's request. If an international certificate expires before the vessel reaches a port in the United States, it may be extended by a consular officer, or a new certificate may be issued by the authorities of a foreign government which is a party to the Convention. Such request would be made by the consular officer, not by the master. A consular officer may extend a certificate of a vessel to allow the ship to complete its return voyage to the port where it is registered or is to be surveyed. A certificate should not be extended for a period exceeding five months (see Chapter I, Regulation 14(c) and (d) of the Convention). Certificates which may not be extended by the consular officer are the Cargo Ship Safety Construction Certificate, the U.S. Coast Guard Certificate of Inspection (CG Form 841), and the International Oil Pollution Prevention (IOPP) Certificate.

(2) An inspection and survey is not a prerequisite for an extension, but the master of the vessel and the chief radio officer in the case of a cargo ship, or the master of the vessel, the chief engineer, and the chief radio officer of a passenger ship, shall be required to furnish an affidavit that, to the best of their knowledge and belief, the vessel complies with the applicable requirements of the Convention. The consular officer extends the certificate by typing the following on each certificate:

“Extended on (Month)_____,
(day)_____, (year) _____ at the
Port of (Name) _____ for the
purpose of allowing the S.S.
(Name)_____ to complete
its return voyage to the United States
but in no event to exceed five
months from (Date of expiration of
certificate).

(Signature of consular officer)

IMPRESSION
SEAL

(Typed name of consular
officer)

(Title of consular officer)

(3) If the master of a U.S. flag vessel requests a Cargo Ship Safety Radiotelegraphy, Radiotelephony, or Cargo Ship Safety Equipment Certificate to be issued, the consular officer should request the local government authority (if party to the Safety Convention) to inspect the vessel for compliance with the Convention requirements and to issue one or all of the certificates (Chapter I, Regulation 13 of the Convention). A certificate issued by a government of a country not a party to the Convention has no validity. Consular officers at a port within the jurisdiction of such a country may not ask that government to issue any certificate required under the Convention.

b. Violations and Requirements Outside the Convention

Authorities of a foreign government can legally inspect a U.S. vessel to determine if it is complying with the Convention provisions. A consular officer must be notified in writing if the inspection results in a requirement being imposed on the vessel (Chapter I, Regulation 19 of the Convention). After investigating and making appropriate representations to the foreign authorities, the consular officer submits a telegraphic report to the Department (Attn: U.S. Coast Guard) regarding all instances where a requirement is imposed upon a vessel of the United States. The international conventions to which the United States is a party establish minimum requirements regarding matters dealt with. A foreign government is free, however, to impose requirements on a U.S. vessel in its ports, subject to the general limitation that the requirements not exceed those imposed on its own vessels or vessels of a third nation. The United States has not ratified certain conventions of the International Labor Organization. Vessels of the United States may obtain a certificate as to the strength of their loading gear from the American Bureau of Shipping or from the International Cargo Gear Bureau. If either of these certificates is not accepted by foreign port authorities, or if a vessel does not have a certificate, the master must comply with the requirements of the foreign port.

7 FAM 744 TRANSFER OF VESSELS ABROAD

7 FAM 744.1 Certificate of American Ownership

When a vessel has been transferred abroad from foreign to U.S. ownership or constructed for a U.S. citizen, a consular officer shall, upon request, provide the purchaser with a Certificate of American Ownership (see 7 FAM 744 Exhibit 744.1). To issue this certificate the consular officer must determine whether the sale was valid in all respects, that the parties to the sale complied with all legal formalities, that the approval of the foreign government, if necessary, has been obtained, and that the sale was free from fraudulent intent on the part of either the seller or the purchaser. The consular officer should initiate any investigation necessary to ensure that all prerequisites for certification have been met.

NOTE: The net tonnage limitation on issuance of Certificates of American ownership has been eliminated. The purpose of the certificate is to provide an official English-language document to facilitate the vessel's passage at sea and entry at ports en route. It serves as prima facie evidence that the vessel was transferred to U.S. ownership, and that the transfer was made in good faith and in proper manner. It also qualifies the vessel to fly the U.S. flag. The certificate is in addition to, but is not a substitute for, Coast Guard registry. An owner who wishes Coast Guard documentation must make application directly to the U.S. Coast Guard (see section FAM07-0744.2). The purchaser must present proof of U.S. citizenship in order to be issued a certificate. If the purchaser is an individual, a passport or other documentary evidence is acceptable. If the purchaser is a partnership or a corporation, the charter or other evidence of the purchaser's nationality should be submitted. The purchaser must acknowledge the execution of the bill of sale before the consular officer and satisfactorily establish that the bill of sale was properly executed under local law. The Department's authorization is not necessary for issuance of a certificate. The original certificate is for the purchaser, and a copy is for the post's files. It is not necessary to forward a copy to the Department or to the U.S. Coast Guard. The format for the certificate is shown as 7 FAM 744 Exhibit 744.1 .

7 FAM 744.2 Provisional Certificate of Registry

In accordance with revised U.S. Coast Guard procedures effective July 1, 1982, Provisional Certificates of Registry are no longer issued by Foreign Service posts. Applications for vessel documentation are now made directly to the U.S. Coast Guard office at, or with jurisdiction over, the vessel's home port.

7 FAM 745 THROUGH 749 UNASSIGNED

7 FAM 743 Exhibit 743.1

Sample of a Marine Note of Protest

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Sample of a Marine Note of Protest

FORM FS-201a Rev. June 1990	DEPARTMENT OF STATE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA MARINE NOTE OF PROTEST (22 United States Code 1173)
Port of <u>Lisbon, Portugal</u>	
On this <u>3rd</u> day of <u>August</u> , 19 <u>83</u> , before me, <u>Stanley Smith</u> , American <u>Consul</u> for <u>Lisbon, Portugal</u> and the dependencies thereof, personally appeared <u>Samuel Weller</u> , Master of the vessel called the <u>M.V. Donna Davis</u> of the burden of <u>6,380 net</u> tons or thereabout, and declared that on the <u>27th</u> day of <u>July</u> last past he sailed in and with the ship from the port of <u>New York, N.Y.</u> , laden with <u>general cargo</u> , and arrived, in the ship, at <u>Lisbon, Portugal</u> on <u>Aug. 2, 6:14 p.m.</u> , and <small>(insert the date and hour)</small> having experienced <u>rough and boisterous weather, and fearing damage</u> to the ship and cargo, he <small>(State facts which constitute the protest)</small>	
hereby enters this Note of Protest accordingly, to serve and avail him hereafter, if found necessary.	
<div style="text-align: right;"><u>Stanley Smith</u> _____ Consul of the United States of America.</div>	
Attested: <div style="text-align: center;"><u>Samuel Weller</u> _____ Master.</div>	
[SEAL]	
<div style="text-align: center;"><u>August 3, 1983</u> <u>Lisbon, Portugal</u> <small>(Date) (Place)</small></div>	
I HEREBY CERTIFY that the within document is a true copy of a Marine Note of Protest, the original of which is deposited as a part of the permanent archives of the American Consulate at <u>Lisbon, Portugal</u>	
<div style="text-align: right;"><u>Stanley Smith</u> _____ Consul of the United States of America.</div>	

Sample of an Extended Note of Protest

MARINE EXTENDED PROTEST

(22 U. S. Code 1173)

Port of Rio de Janeiro, Brazil

By this public instrument of declaration and protest be it known and made manifest to all whom these presents shall come or may concern, that on the 8th day of December, 1983, before James Trevor American Vice Consul for Rio de Janeiro, and dependencies thereof, personally came and appeared J.M. Launder Master of the vessel called the Santa Luisa Official No. 503862 of the burden of 6,064 (net) tons or thereabout, then lying in this port of Rio de Janeiro laden with general cargo, who duly noted and entered with the said James Trevor his protest, for the uses and purposes hereafter mentioned; and now, on this day, the 12th day of December, 1983, before me, Clifford Jones American Consul at Rio de Janeiro, comes the said J.M. Launder and requires me to extend this protest; and together with the said Master also come Alfred Melton, First Officer; John Rey, Second Mate; Frank Nelson, Bosun and

all crew members of said ship, all of whom, being by me duly sworn, do voluntarily asseverate as follows: That these appearers, on the 25th day of November, 1983, sailed in and with the said Santa Luisa from the port of New Orleans laden with general cargo and bound to the port of Rio de Janeiro. That the said ship was then properly manned and equipped and in every respect seaworthy; that from December 5 to 7, 1983 the ship encountered rough and boisterous weather, and one day of heavy fog; that at 0600 on December 9, 1983, when lying at Pier 42 at this port, during a heavy easterly gale, the ship's starboard side banged into the dock continuously, smashing fenders and four mooring lines. Repeated attempts were made to contact the agent but the telephone lines were down, and at 0900 the port captain came to the dock, saw the situation and sent three tugs at 1030 to take the ship from the dock for anchorage in the harbor. One tug broke a ship's bow line. Soundings taken December 10 and 11 showed no. 4 hold taking in some water. Additional damage is feared to the vessel and its cargo.

And these said appearers, upon their oaths aforesaid, do further declare and say: That during the said voyage they, together with the others of the said ship's company, used their utmost endeavors to preserve the said Santa Luisa and cargo from all manner of loss, damage, or injury. Wherefore the said J.M. Launder Master, has protested in accordance with law and declares that all losses, damages, costs, charges, and expenses as stated herein that have happened to the said Santa Luisa or cargo, or to either, are and ought to be borne by those to whom the same by right may appertain by way of average or otherwise, the same having occurred as before mentioned, and not by or through the insufficiency of the said Santa Luisa, her tackle or apparel, or fault or neglect of this appearer, his officers, or any of his mariners, or fault or neglect in the proper loading, stowage, custody, and care of the cargo.

Thus done and protested in the port of Rio de Janeiro this 12th day of December, 1983

IN TESTIMONY WHEREOF, these appearers have hereunto subscribed their names, and I, the said Clifford Jones, have granted to the said Master this public instrument, under my hand and the seal of this Consulate General to serve and avail him, and all others whom it does or may concern as need and occasion may require,

J.M. Launder Master. Clifford Jones Consul of the United States of America.
Alfred Melton First Officer.
John Rey Second Mate
Frank Nelson Bosun
 (Position on crew)

*Have insert narrative of the facts of the voyage as they occurred, with full and minute particulars, with date, latitude, longitude, etc. If additional space is required, blank sheets may be used and securely attached to this document under the seal of the consular office.

Consul of the United States of America

